

1
2
3
4
5
6
7
8 Honorable John C. Coughenour
9
10

11
12
13 UNITED STATES DISTRICT COURT
14 WESTERN DISTRICT OF WASHINGTON
15 AT SEATTLE
16
17

18 PLANNED PARENTHOOD OF THE GREAT
19 NORTHWEST AND THE HAWAIIAN
20 ISLANDS, INC.,

21 Plaintiff,

22 v.

23 ALEX M. AZAR II, in his official capacity as
24 Secretary of the United States Department of
25 Health and Human Services; and UNITED
26 STATES DEPARTMENT OF HEALTH AND
27 HUMAN SERVICES,

Defendants.

No. 2:18-cv-01627-JCC

[PROPOSED] TEMPORARY
RESTRANDING ORDER AND/OR
PRELIMINARY INJUNCTION

28 Plaintiff Planned Parenthood of the Great Northwest and Hawaiian Islands ("PPGNHI")
29 or ("Plaintiff") has moved for an order temporarily restraining and/or preliminarily enjoining
30 Defendants U.S. Department of Health and Human Services and Secretary Alex M. Azar II
31 ("HHS" or "Defendants"), their employees, agents and successors, and all others acting in
32 concert or participating with it, from publicly disclosing PPGNHI's most recent and successful
33 competitive application for Title X funds (the "Confidential Records"). The Court, having
34

[PROPOSED] TEMPORARY RESTRAINING
ORDER - 1

Cause No. 2:18-cv-01627
90002 00109 hk08ec53kv

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245.1700
FACSIMILE: (206) 245.1750

1 considered the pleadings, legal authority, and argument presented in support of Plaintiff's
2 Motion, as well as the declarations submitted with that Motion, has found and concluded, for the
3 specific reasons required under Federal Rule of Civil Procedure 65, that Plaintiff has shown (1) a
4 likelihood of success on the merits, (2) that it will suffer irreparable harm if a temporary
5 restraining order is not issued, and (3) that the balance of harms and the public interest weigh in
6 favor of granting the temporary restraining order.
7

8 Specifically, the Court finds that Plaintiff has established a substantial likelihood of
9 success on the merits of its claim that Defendants' decision to proactively disclose the
10 Confidential Records violates the Administrative Procedure Act both because the decision is
11 arbitrary and capricious and because it is contrary to law. An agency action is "arbitrary and
12 capricious" when:

13 [T]he agency has relied on factors which Congress has not intended it to consider,
14 entirely failed to consider an important aspect of the problem, offered an
15 explanation for its decision that runs counter to the evidence before the agency, or
16 is so implausible that it could not be ascribed to a difference in view or the
product of agency expertise.

17 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
18 (1983). Here, HHS' decision is arbitrary and capricious because the agency failed to offer a
19 reasoned explanation for its decision and failed to consider PPGNHI's arguments that the
20 Confidential Records should not be disclosed. The decision is contrary to law because releasing
21 the Confidential Records would violate Exemption Four of FOIA and the Trade Secrets Act. 18
22 U.S.C. § 1905; *see Pac. Architects & Engineers Inc. v. U.S. Dep't of State*, 906 F.2d 1345, 1347
23 (9th Cir. 1990) (observing that FOIA Exemption Four and the Trade Secrets Act are coextensive
24 and bar release of qualifying material and the "agency does not have discretion to release it"
25 under FOIA).

26
27 [PROPOSED] TEMPORARY RESTRAINING
ORDER - 2
Cause No. 2:18-cv-01627
90002 00109 hk08ec53kv

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245.1700
FACSIMILE: (206) 245.1750

1 In addition, on November 9, 2018, in the absence of a temporary restraining order,
2 PPGNHI, along with its patients, will suffer immediate and irreparable injury. Disclosure would
3 immediately and irreparably injure PPGNHI because no relief could remediate its competitors
4 from obtaining the Confidential Records and using the information to compete against PPGNHI
5 for Title X funds or other grants in Hawaii and elsewhere, including the other states in which
6 PPGNHI competes for Title X grants. Loss of funding, as a result, would harm PPGNHI's
7 patients, who rely on PPGNHI for essential health care.

9 While PPGNHI and its patients will suffer serious, irreparable injury in the absence of
10 relief, Defendants will suffer no injury at all from the preservation of the status quo while the
11 litigation proceeds. Finally, the public interest weighs in favor of granting a temporary
12 restraining order and/or preliminary injunction because the public interest favors applying
13 federal law correctly. *See Small v. Avanti Health Systems, LLC*, 661 F.3d 1180, 1197 (9th Cir.
14 2011). Furthermore, because FOIA bars public disclosure here, there is no FOIA public interest
15 in disclosure of the Confidential Records.

17 THEREFORE, it is hereby ORDERED that the motion is GRANTED and Defendants
18 and their officers, agents, servants, employees, and attorneys, and those persons in active concert
19 or participation with them, are TEMPORARILY RESTRAINED and/or PRELIMINARILY
20 ENJOINED from publicly disclosing PPGNHI's most recent and successful competitive
21 application for Title X funds.

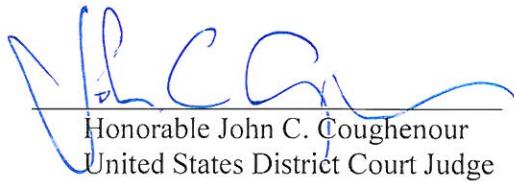
22 This Temporary Restraining Order shall expire on Nov 16, 2018, at 9:00.m.,
23 unless extended by the parties and the Court.

25 Plaintiff shall not be required to post bond.

27 [PROPOSED] TEMPORARY RESTRAINING
ORDER - 3
Cause No. 2:18-cv-01627
90002 00109 hk08ec53kv

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245.1700
FACSIMILE: (206) 245.1750

1 IT IS SO ORDERED.
2
3 DATED 11/8/18
4
5 Presented by:
6
7 PACIFICA LAW GROUP LLP
8
9 By: *s/ Gregory J. Wong*
10 Gregory J. Wong, WSBA #39329
11 Claire E. McNamara, WSBA #50097
12 1191 2nd Avenue, Suite 2000
13 Seattle, WA 98101
14 206-245-1700
15 greg.wong@pacificalawgroup.com
16 claire.mcnamara@pacificalawgroup.com
17
18 PLANNED PARENTHOOD
19 FEDERATION OF AMERICA
20
21 Richard Muniz (*Admitted Pro Hac Vice*)
22 Carrie Y. Flaxman (*Admitted Pro Hac Vice*)
23 1110 Vermont Avenue, Suite 300
24 Washington, DC 20005
25 202-973-4800
26 richard.muniz@ppfa.org
27 carrie.flaxman@ppfa.org
28
29 REPRODUCTIVE RIGHTS &
30 JUSTICE PROJECT
31
32 Priscilla J. Smith (*Admitted Pro Hac Vice*)
33 Yale Law School
34 319 Sterling Place
35 Brooklyn, NY 11238
36 priscilla.smith@ylsclinics.org
37
38 Attorneys for Plaintiff
39
40
41 [PROPOSED] TEMPORARY RESTRAINING
42 ORDER - 4
43 Cause No. 2:18-cv-01627
44 90002 00109 hk08ec53kv


Honorable John C. Coughenour
United States District Court Judge

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245.1700
FACSIMILE: (206) 245.1750